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DEPARTMENT FOR EUR/SE

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SUBJECT: HIGH COURT RULES FOR CLOSURE OF TEACHERS' UNION

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Classified by Deputy Polcouns Charles O. Blaha; reasons 1.4 b and d.

1. (U) Summary: A Turkish appeals court ruled May 25 for the closure of Egitim Sen, the country's largest teachers' union, on the grounds that the union's bylaw violates the Constitution by advocating education in "mother tongues," which would include Kurdish. The union will appeal the ruling to the European Court of Human Rights (ECHR). Union leaders might avoid closure by removing the controversial language from the bylaw while the ECHR case is pending. Egitim Sen representatives say the union is opposed by both the State, which views the use of Kurdish as a threat to national unity, and the ruling AK Party (AKP), which resents the union's strongly secular stance. Egitim Sen has close relations with teachers' unions abroad, and European contacts say EU states are watching the case closely. End Summary.

Union Will Appeal to ECHR

2. (U) The Turkish High Court of Appeals ruled that the bylaw of Egitim Sen, the trade union representing 30 percent of teachers in Turkey, violates the Constitution by advocating the right of citizens to be educated in their mother tongue. The 45-0 ruling was issued by the Court's Grand Chamber, its highest body. The ruling cannot be appealed further within the Turkish judiciary.

3. (U) Oya Aydin, attorney for Egitim Sen, told us she will file an appeal June 2 with the ECHR. She will ask the ECHR to issue an immediate, "precautionary" ruling that would prohibit the GOT from closing Egitim Sen while the broader ECHR case is ongoing. However, she said precautionary rulings are normally reserved for matters of life and death, and it is unlikely the ECHR will grant her request.

4. (U) Aydin predicted that the union will hold an emergency board meeting to temporarily remove the article on mother tongue education from the bylaw. This would nullify the closure order and allow Egitim Sen to maintain operations. If the ECHR rules in the union's favor, a process that would take 3-4 years, the language could be re-inserted into the bylaw. If Egitim Sen fails to revise its bylaw, and if the ECHR fails to issue a precautionary ruling, then the union will be closed within two months.

Labor Court Sides With Union

5. (U) The Grand Chamber ruling against Egitim Sen capped a see-saw legal battle between the appeals court and an Ankara labor court that rejected the charges against the union. The labor court in September 2004 ruled that the case against Egitim Sen violated the rights of free expression and association. The court stated in its decision that such cases "can only be launched in countries like Colombia but not in the juridical framework of the European Union." The labor court further asserted that education in mother tongues would strengthen, not threaten, national unity. The High Court of Appeals overturned the ruling, maintaining that under the European Convention on Human Rights freedom of association can be restricted "for the protection of national security, territorial integrity, and public order." Nevertheless, the labor court in February 2005 stood by its original decision, at which point prosecutors took the case to the Grand Chamber.

6. (U) At issue is an article of the Egitim Sen bylaw in which the union "defends the right of individuals to receive education and develop their culture in their mother tongue." Prosecutors charged that the bylaw article violates Article 3 of the Constitution, which states that Turkish is the official language of the nation, and Article 42, which states that, "no language other than Turkish will be taught as a mother tongue to Turkish citizens." Union attorneys argue that the bylaw does not challenge Turkish as the official language, and does not violate Article 42 because it is merely an expression of the union's view, not a call to action.

17. (U) State restrictions on the use of "mother tongues" are primarily aimed at limiting the use of Kurdish, the only restricted language for which there is a significant demand. Under recent EU-related reforms, it has become legal to open private Kurdish language courses, but not to teach or use Kurdish in primary or secondary schools.

State Views Kurdish Education As Threat

18. (U) Both Aydin and Emirali Simsek, Egitim Sen General Secretary, averred to us that the case against the union is

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politically motivated. Simsek noted that the controversial sentence has been in the union's bylaw for 15 years, though it was modified slightly in 2002. He said efforts to close the union began in 2003 when the Turkish General Staff (TGS) raised objections. Simsek showed us a copy from the case file of a June 27, 2003 letter from TGS to the Ministry of Labor and Social Security calling on Egitim Sen to remove the mother tongue article from the bylaw.

19. (C) Simsek said Egitim Sen is vulnerable because it has enemies in both the security establishment and the AKP. TGS and other core State institutions consider the use of Kurdish a threat to national unity, and therefore object to the union's advocacy of education in mother tongues.

AKP Objects to Union's Secular Stance

10. (C) AKP, meanwhile, views Egitim Sen as an obstacle to its efforts to expand the role of religion in education, Simsek said. The union's members are generally leftist and highly secular. Egitim Sen has challenged a number of AKP proposals that the union deemed contrary to secular education. For example, the union tried unsuccessfully to block a recent AKP plan to include visits to mosques and more extensive prayer instruction in high school religion classes. This explains why the Labor Ministry, led by AKP appointees, did not resist when TGS urged the Ministry to open a case against Egitim Sen, he said.

11. (C) Aydin said this dual opposition to Egitim Sen explains the unanimous decision by the high court to close the union -- all the Grand Chamber members are under the influence of either AKP or the security establishment. She noted that the Grand Chamber took only 26 days to reach its unanimous decision to close the union. She said she researched past cases, and concluded that the court normally deliberates for at least 80 days before reaching a verdict.

Ruling Reflects Anti-EU Backlash

12. (C) Still, she did not expect it to come to this. After the February decision by the labor court to stand by its rejection of the case against Egitim Sen, Aydin predicted prosecutors would not appeal. The case had drawn international attention at a time when Turkey's EU candidacy placed the judiciary under a spotlight. According to Aydin, the Turkish State has become generally more reluctant to close "suspect" institutions, preferring instead to keep them off balance through harassment cases ending in acquittal. Aydin believes the State's decision to go the distance in the Egitim Sen case is a reflection of the broader nationalist backlash against the EU reforms.

13. (C) Several European diplomats have told us their capitals have instructed them to follow the Egitim Sen case closely. Egitim Sen has more than 200,000 members, making it not only the biggest teachers' union, but the biggest union of any kind in Turkey. Its membership is not overwhelmingly Kurdish. It has close ties to teachers' unions in Europe, which, our contacts say, are pressuring their governments to raise the case with the GOT. Egitim Sen has also been in contact with the National Education Association in Washington, which has written to PM Erdogan, President Sezer, and Justice Minister Cicek about the court ruling.

Comment

14. (C) The ECHR is sure to rule in Egitim Sen's favor, a point the labor court made clear in its attempts to dismiss the charges. But the Turks are in no mood these days to take their cues from Europe. While there have been some positive rulings over the past couple of years by courts citing the European Convention on Human Rights, we continue to see verdicts, like this one, that openly flout EU standards.

